

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATIONS No 214, 215 & 219 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AGARWAL KASHIRAM CHARITABLE TRUST

Versus

SANJOG ENTERPRISES

Appearance:

MR AR GUPTA for Petitioner

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 29/03/2000

ORAL(COMMON) JUDGEMENT

These three Civil Revision Applications have been filed under Section 115 of the Code of Civil Procedure, 1908, challenging the judgment and order recorded by the learned Appellate Bench of the Court of Small Causes,

Ahmedabad in three Appeals from Orders bearing No. 101/97, 31/98 and 100 of 1997 confirming the orders passed by the learned Judge of the Court of Small Causes at Ahmedabad below application Exh. 5 in HRP suit No.772/97, 754/97, 771/97 respectively preventing the petitioner from dispossessing the respondent pending hearing and disposal of the aforesaid suits.

2. The respondents in these three matters preferred the aforesaid Civil Suits before the learned Judge of the Small Causes Court stating that they are the tenants in respect of the property in question. That they have been inducted as tenants by the Managing Trustee of the petitioner Trust and the other Trustees have been attempting to dispossess them and, therefore, they filed suits as aforesaid and applied for interim relief preventing the petitioner from dispossessing them pending hearing and disposal of the suit.

3. The Learned Judge, of Small Causes Court, prima facie found that the respondents were in possession and they were the tenants and, therefore, their possession should be protected. Same view was adopted by the learned Appellate Bench in the aforesaid three Appeals from Orders. Therefore, the trial court granted temporary injunction in all the three matters and the Appellate Bench confirmed this interim reliefs and dismissed all the three appeals.

4. Feeling aggrieved by the said judgment and order of the Appellate Bench of the Small Causes Court, Ahmedabad, the petitioners have preferred these Revisions before this Court. It has been contended by the petitioner in this Court as well as the before the Courts below that the then Managing Trustee of the petitioner Trust had close blood relation with these respondents and, therefore, he misused his position and inducted the respondents as trespassers and they have been shown as tenants. That really, they are not tenants and the said Managing Trustee had no authority to induct them as tenants. It is also contended that under the provisions of Section 36 of the Bombay Public Trust Act, 1950 (for short, 'the Act'), no lease for a period exceeding three years can be granted by the Trustees without the previous express permission in writing obtained from the Charity Commissioner, that such permission has not been obtained and, therefore, the alleged lease in favour of the respondents is illegal. It has also been contended here that the Managing Trustee had to act upon the instructions of the Chairman of the Trustee. That has not been done and, therefore also, the lease in favour of

the respondent is illegal.

5. These points have been extensively argued on behalf of the petitioner Trust by the learned Advocate for the petitioner Trust. The main contention is that the respondents have been wrongly inducted without following due process of law. That the Managing Trustee has no authority to lease out the property without the consent of the other Trustees. Let us take it that he could not have done so under Section 36 of the said Act without permission of the Charity Commissioner. Let us also take it that the Managing Trustee of the petitioner Trust has committed some illegality as aforesaid, however, the fact remains that the respondents are admittedly in possession of the aforesaid properties since May 1997 and though there was a passage of about 3 years, the other Trustees have not taken any action for evicting them from the property in dispute. Unless that is done, the respondents being in possession of the property in question, prima facie, cannot be disturbed from the said possession. Therefore, the two courts below were prima facie right in observing that since the respondents were in possession of the property in question and their possession should be protected.

6. It is true that some observations have been made with respect to the provisions contained in Section 36 of the said Act as well as in Section 12 of the Bombay Rents, (Hotels and Lodging, House Rates Control) Act, 1947 (for short, 'the Bombay Rent Act') on this aspect. It has been contended on behalf of the petitioner that since Section 36 of the said Act restricts the right and power of the Trustees to lease out any property beyond three years without permission of the Charity Commissioner, any lease beyond that period would be illegal. However, this would be a matter of dispute to be decided at the end of the trial. Moreover, as said above, the petitioner has not filed any litigation against the respondent claiming that the lease in favour of the respondents is illegal. If it is beyond three years, it would be illegal under section 36 of the said Act and even if it is for a period of less than three years, it would still be illegal since the Managing Trustee did not act upon the instructions of the Chairman of the Trust or that the Managing Trustee could not act in the matter since there was no joint resolution or joint action by all the four Trustees of the petitioner Trust. The petitioner can very well take such a contention at the final stage of the suit. The petitioner may be at liberty to file appropriate litigation against the respondents for appropriate relief

including the relief of declaration and possession. But so ar as the present three applications are concerned, it is very clear that the two courts below have prima facie, found that the respondents in these three matters are tenants and there is no dispute that they have been inducted as tenants by the Managing Trustee. If the Managing Trustee did not act honestly or that he has committed illegality as aforesaid, proper remedy is available to the petitioner as stated hereinabove. However, without going through these remedies, the petitioner cannot possibly remove the respondents from the possession of the property in question pending hearing and disposal of the suit.

7. Learned Advocate for the petitioner has relied on a decision in the case of Manjulaben R Barot v. v. The Collector of Mehsana, 1995 (2) GLH 701. There it has been laid down that in case of lease of places on public street, no declaration or injunction is required under Section 36 of the said Act for any other purpose of the act.

Another decision relied upon by the learned Advocate for the petitioner is in the case of Huseinmiya Safimiya v. Habibaba Hasamsha Fakir, reported in 1985 GLH 1015. There the Division Bench of this Court dealt with the provisions contained in Section 36 of the said Act and held that it must be kept in mind that as per Section 36 of the said Act, no immoveable property of a public trust can be alienated in favour of any one by a trustee without express permission of the Charity Commissioner. And if such alienation is made, it shall be invalid. However, it seems that it was a suit by the trust and therefore, the said decision was arrived at. This is not a suit by the Trustees, so far as the present litigations are concerned.

In the case of B K Ramji v S S Jivraj, AIR 1958 BOM. 53, it has been laid down that when the property has been mortgaged with possession and when the mortgagee inducts any person as tenant, the tenancy will be valid till the mortgage is in existence and not beyond it. Here in the present case, even if we take it as a lease, it cannot be for more than three years and then also, on the date of the suit three years have not been completed, since the lease was allegedly executed in May 1997. Therefore, the said tenure was not completed on the date of the suit. Similar is the position in the case of Mahabair Gope v. Harbans Narain Singh & Ors., AIR 1951 SC 205. There it has been alleged that a mortgagee could not grant lease beyond the period of mortgage.

8. Let us take it that the Managing Trustee has not acted in accordance with Section 36 of the said Act, or that the Managing Trustee has relations with the respondents, or let us take it that the Managing Trustee could not have leased the property without the instructions from the Chairman or that the Managing Trustee could not have leased out the property without consulting the other three Trustees of the petitioner Trust. Even in that event, the fact remains that the Managing Trustee had inducted these respondents as tenants and, therefore, the possession is not in dispute and the respondents cannot be evicted or dispossessed without due process of law. Therefore, their possession has been rightly protected by the trial court and, therefore, it is not open to this Court, in its revisional jurisdiction, to interfere with the said decision of the two courts below.

9. It has been argued that the learned Appellate Bench had made certain observations with respect to the provisions of section 36 of the said Act as well as section 12 of the Bombay Rent Act. However, these are tentative findings for the purpose of deciding interim relief applications. The petitioner will have liberty to advance his case and arguments on the application under section 36 of the said Act and under Section 12 of the Bombay Rent Act respectively as aforesaid, if and when occasion arises. Since these are the tentative findings for the purpose of deciding interim relief applications, the trial court will not be influenced by these observations and will come to its own findings and decision on due appreciation of law and facts of the case.

10. The trial court as well as the Appellate Bench of the Small Causes Court, both had jurisdiction to pass orders in question. They have exercised their jurisdiction in passing the orders. It is not shown that any irregularity has been committed by both the courts relating to jurisdiction while passing the aforesaid orders.

11. In view of the aforesaid, there is no question of interference at this stage in this Revision Application since the Revisional court has limited power and jurisdiction. In that view of the matter, there is no merit in these revisions and they are required to be dismissed and are accordingly dismissed. Rule discharged in each of the Revision Applications. No order as to costs.

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